

CHAPTER 80-1-12

DIVIDENDS, MANAGEMENT FEES, ETC.

80-1-12-.01	Dividends	80-1-12-.03	Repealed
80-1-12-.02	Intercompany Dealings, Management Fees		

80-1-12-.01 Dividends.

(1) The Board of Directors of any state-chartered bank in this State may declare and the bank may pay cash dividends on its outstanding capital stock without any requirement to notify the Department or request the approval of the Department under the following conditions:

(a) Total classified assets at the most recent examination of the bank, the conclusions of which may have been presented to the Board of Directors, do not exceed eighty (80) percent of Tier 1 Capital plus the Allowance for Loan Losses as reflected at such examination; and

(b) The aggregate amount of dividends declared or anticipated to be declared in the calendar year does not exceed fifty (50) percent of the net profits, after taxes but before dividends, for the previous calendar year, provided, however, a bank that files federal income taxes as a Subchapter S-Corporation may pay an additional amount of dividends without Department approval equivalent to fifty (50) percent of the income taxes which the bank would have had to pay in the prior year as a Subchapter C-Corporation; and

(c) The ratio of Tier 1 Capital to Adjusted Total Assets shall not be less than six (6) percent.

(2) Any dividend to be declared by the Board of Directors of a bank at a time when each of the foregoing conditions does not exist must be approved, in writing, by the Department prior to the payment thereof pursuant to the provisions of Section 7-1-460(a)(3) of the Code of Georgia. Requests for approval of dividends shall be on forms prescribed by the Department.

(3) The definition of Tier 1 Capital and Adjusted Total Assets as used herein shall be consistent with the definition contained in the Statement of Policies of the Department and the definition utilized by the Federal Regulatory Agencies.

Authority Ga. L. 1974, pp. 853-855.

80-1-12-.02 Intercompany Dealings, Management Fees.

(1) No bank or trust company shall purchase, lease, or sell any asset or service from or to any affiliate upon terms which are detrimental to the bank or trust company or any minority shareholders of the bank or trust company. Purchases, leases, or sales at cost or at market value shall not be considered "detrimental." Other methods for determining propriety of a transaction shall be subject to Departmental oversight and review.

(2) Tax payments by a bank or trust company to a bank holding company shall generally be consistent with the payment of tax liabilities which would have been made had it filed tax returns as a separate entity, eliminating any benefit arising from surtax exemptions. Timing of such payments should generally be in concert with tax payment dates prescribed by tax regulations for estimated tax payments and the rendering of final returns.

(3) Management fees and other charges:

(a) Management fees and other charges, other than specific charges for reimbursement of tax payments or for the purchase or lease of assets or services, payable to a bank holding company or an affiliate of a bank holding company may be paid by the banking or trust subsidiary, provided such fees and charges do not exceed the subsidiary's pro rata share of the administrative overhead of the bank holding company plus any direct expenses attributable to the subsidiary, and it is clearly demonstrated that the subsidiary has received direct benefit from its relationship with the holding company. Such pro rata share shall be determined through an equitable proration of such administrative overhead among all holding company subsidiaries and activities. The proration may be based on any reasonable formula, provided such formula is justified by appropriate memorandum in the files of the bank or trust company and approved by the Board of Directors of the bank or trust company. Such formula shall be subject to Departmental oversight and review.

(b) Administrative overhead shall include only those expenses incurred in general support of all holding company activities and not specifically allocable to a particular subsidiary or activity.

(c) Administrative overhead shall not include net losses incurred in any holding company activity, subsidiary, or investment nor shall the term include any closing costs, interest, service charge or other expense incurred in connection with any debt owed by the holding company. Administrative overhead shall also not include any salary or other compensation of officers, directors or shareholders which is not commensurate with duties and responsibilities performed in some official capacity with the holding company. Time devoted to performance of duties and fulfilling responsibilities at the holding company level and compensation in connection with such action shall be considered in establishing reasonable levels of compensation from the bank or trust company for persons who are employed by both entities. Each entity shall pay only that portion of the total compensation as is commensurate with the duties performed on behalf of that entity.

(4) Fees and charges contemplated under this Rule may be paid after the liability therefor is incurred. Administrative overhead may be accrued or paid monthly based upon a reasonable projection of actual charges, provided such accrual or payment is adjusted to actual expenses at least annually. No such fee or charge may be paid in advance. Appropriate documentation and justification must be maintained in the bank for any disbursement governed by this Rule.

Authority Ga. L. 1974, p. 733; 1976, p. 175.

80-1-12-.03 Repealed.

Authority Ga. L. 1974, p. 733; Ga. L. 1976, p. 175.